

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARVIN BERNSTEIN, Director, Mental Hygiene Legal Service, First Judicial Department, and MICHAEL B., EUGENE C., and EDDIE L., patients at Kirby Forensic Psychiatric Facility, on behalf of themselves and on behalf of all others similarly situated,

Plaintiffs,

- against -

GEORGE E. PATAKI, in his official capacity as Governor of the State of New York, SHARON CARPINELLO, in her official capacity as Commissioner of the New York State Office of Mental Health, and EILEEN CONSILVIO, in her official capacity as Director of Kirby Forensic Psychiatric Facility,

Defendants.

**NOTICE OF
MOTION**

Docket
Number
05-CV-1322
(GEL) (THK)

PLEASE TAKE NOTICE that, upon the Complaint dated February 3, 2005, the accompanying memorandum of law, and all prior pleadings and proceedings herein, the undersigned will move this Court, on a date to be determined by this Court, at the Courthouse, 500 Pearl Street, New York, New York, for an order pursuant to Rule 12 (b) (6) of the Federal Rules of Civil Procedure dismissing this action on the ground that it fails to state a claim upon which relief can be granted, and for such other and further relief as this Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE that, pursuant to Rule 6.1 (b) of the Local Rules of the United States District Courts

for the Southern and Eastern Districts of New York, answering memoranda shall be served by April 6, 2005.

Dated: New York, New York
March 23, 2005

ELIOT SPITZER
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of New York
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By:

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ELIOT SPITZER

Attorney General of the State of
New York

ATTORNEY FOR DEFENDANTS

BY: EDWARD J. CURTIS, JR.

Assistant Attorney General
120 Broadway, 24TH Floor
New York, New York 10271
(212) 416 - 8641

Personal Service of a copy of the within is admitted this

_____ day of _____ 2005
